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19 **UNITED STATES DISTRICT COURT**
20 **CENTRAL DISTRICT OF CALIFORNIA**
21 **WESTERN DIVISION**

22 Taylor Thomson,
23
24 Plaintiff,
25
26 v.
27 Persistence Technologies (BVI) Pte Ltd.
28 Tushar Aggarwal, and Ashley Richardson,
Defendants.

CASE NO. 2:23-cv-04669-MEMF-MAR

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

PRELIMINARY STATEMENT

1
2 1. The Defendants fraudulently induced Ms. Thomson to invest in their
3 crypto offering, concealing a secret kickback and advertising outsized rewards that
4 would never be realized. The Defendants used false promises of outsized annual
5 percentage yield (“APY”) and annual percentage rates (“APR”) to convince Ms.
6 Thomson to invest \$46,082,634 in Persistence Technologies (BVI) Pte Ltd.
7 (“Persistence”)’s cryptocurrency XPRT that was primarily used to earn profits from
8 yield earning opportunities (the “Persistence Offering”). Persistence and Aggarwal
9 paid Ashley Richardson a secret kickback in XPRT for her role in securing Ms.
10 Thomson’s investment in the Persistence Offering. Eventually, the market exposed
11 Defendants’ false statements, the value of XPRT plunged, and Ms. Thomson lost
12 nearly the entirety of her investment. Ms. Thomson seeks to recover no less than
13 \$24,731,599 in this proceeding.¹

14 2. In 2021, Defendant Tushar Aggarwal learned that Defendant Richardson
15 had gained the trust of Ms. Thomson, an affluent individual who had recently
16 become interested in investing in crypto. With Richardson’s assistance, Aggarwal
17 and Persistence falsely promised that if Ms. Thomson purchased Persistence’s
18 cryptocurrency, XPRT, Ms. Thomson would realize a large return on her investment,
19 quoting returns of up to 6,000% APY, and drive market adoption of the newly minted
20 cryptocurrency. Relying on those false promises, Ms. Thomson purchased
21 \$46,082,634 worth of XPRT. Aggarwal and Persistence structured Ms. Thomson’s
22 investment into 10 different digital wallets to make it appear to the market that
23 numerous large investors had purchased XPRT. In actuality, each of those digital
24 wallets held only Ms. Thomson’s XPRT. Aggarwal and Persistence paid Richardson

25 _____
26 ¹ Ms. Thomson initiated a proceeding in a SIAC arbitration in Singapore. In the SIAC arbitration
27 Ms. Thomson seeks damages in connection with the investment in the Persistence Offering of
28 4,000,000 XPRT made pursuant to the contract between Ms. Thomson and Persistence. This action
seeks damages in connection with the additional investments in the Persistence Offering of
4,624,431 XPRT that Ms. Thomson made subsequent to the purchases under the contract.

1 a secret kickback of \$783,702 in XPRT for working with them to induce Ms.
2 Thomson to invest in Persistence. Richardson hid this kickback from Ms. Thomson
3 and in written correspondence explicitly denied receiving any kickbacks or
4 commissions.

5 3. While the Defendants' efforts to improperly inflate the value of XPRT
6 initially was successful, it predictably failed and XPRT cratered in value. In the
7 approximately 24 months since Ms. Thomson's initial investment in August 2021,
8 XPRT dropped more than 90% in value, causing losses of at least \$43,565,429.

9 4. This lawsuit seeks to recover a portion of those losses associated with
10 open market purchases made by Ms. Thomson totaling \$24,731,599. The losses
11 associated with purchases made pursuant to the Token Sale Agreement (the
12 "Agreement") are being litigated in an arbitration proceeding in Singapore.

13 5. Persistence marketed XPRT as an asset to be purchased in connection
14 with the Persistence Offering for the primary purpose of earning yield in various
15 liquidity pools and staking opportunities controlled by Persistence. Ms. Thomson
16 used fiat and crypto to invest in the Persistence Offering, expecting to profit from the
17 efforts of Aggarwal and the rest of the Persistence team. Aggarwal repeatedly touted
18 the work being done by the "project team" to Ms. Thomson and in his efforts to
19 obtain more investors in the Persistence Offering. The Persistence Offering was
20 being marketed directly to investors in the United States through social media,
21 websites, speaking engagements, and at least one secretly paid agent of Persistence,
22 Richardson.

23 6. The Defendants' efforts to obtain investors in the Persistence Offering
24 were directed through Richardson, a California resident who executed the scheme in
25 Los Angeles, California. The calls, text messages, and emails promoting the
26 Persistence Offering to Ms. Thomson occurred while Richardson was located in
27 California. During many of these conversations, Ms. Thomson was also located in
28 California. While Ms. Thomson was physically present outside of the U.S. when

1 certain purchases pursuant to the Agreement were executed, Persistence knew that
2 the sales and marketing efforts were occurring while Richardson and Ms. Thomson
3 were in California.

4 7. Persistence solicited Ms. Thomson by touting the profitability of the
5 Persistence Offering, including the increase in the value of XPRT and the lucrative
6 opportunities to use XPRT to stake and otherwise earn “yield” and “rewards.” Many
7 of Persistence’s promises in connection with the Persistence Offering of exorbitant
8 “APYs,” “APRs,” and “rewards” were false.

9 8. After conducting an investigation into claims made by Persistence and
10 Richardson, Plaintiffs have identified a number of false or misleading statements
11 made the Defendants. The declaration of investigation and compliance professional
12 Bradley Dizik of Guidepost Solutions LLC (“Guidepost Solutions”) has been
13 attached to this amended complaint (the “Dizik Decl.”).²

14 9. For example, Persistence touted on Twitter on April 8, 2022, that the
15 current APR for a PSTAKE/OSMO pool was 336%.³

16 10. The April 8, 2022 tweet was demonstrably false. “Identifiable data from
17 five days prior to this tweet shows that the APR was 62%. The same data shows that
18 two days following this tweet, the APR was 74%. These APR percentages are many
19 multiples lower than the promised 336% on April 8, 2022. We have not identified
20 any basis for a 336% APR on April 8, 2022.”⁴

21 11. Ms. Thomson was convinced by Richardson, Aggarwal, and
22 Persistence’s false or misleading statements that the Persistence Offering was a
23 viable investment with an extraordinarily profitable yield earning component. In
24 actuality, XPRT is an altcoin with very little backing that ultimately lost over 90% of
25

26 ² The Dizik Decl. is incorporated by reference as if fully restated herein.

27 ³ @pStakeFinance, TWITTER (April 8, 2022, 1:48 PM),
[https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-](https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4UsBKKQDK5A)
28 [sBKKQDK5A](https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4UsBKKQDK5A).

⁴ Dizik Decl. ¶ 24(n).

1 its value causing Ms. Thomson to lose tens of millions of dollars' worth of
2 cryptocurrency.

3 12. Accordingly, Defendants Ashley Richardson, Tushar Aggarwal, and
4 Persistence Technologies (BVI) Pte Ltd. engaged in fraud and the unregistered sale
5 of securities in connection with the Persistence Offering.

6 **THE PARTIES**

7 13. Plaintiff Ms. Thomson is a Canadian citizen who currently resides in
8 England.

9 14. Defendant Persistence is a company incorporated in the British Virgin
10 Islands and located in Singapore.

11 15. Defendant Tushar Aggarwal is the founder and Chief Executive Officer
12 of Persistence currently and at all times relevant to this action.

13 16. Defendant Richardson is an individual who resided in Los Angeles,
14 California, at all times material to this action, and who currently resides in and is a
15 citizen of the State of California.

16 **JURISDICTION AND VENUE**

17 17. This Court has subject matter jurisdiction under 28 U.S.C. § 1331
18 because Plaintiff asserts causes of action arising under the laws of the United States.

19 18. The Court has supplemental subject matter jurisdiction over Plaintiff's
20 state law claims under 28 U.S.C. § 1367(a) because they are so related to the
21 Plaintiff's federal law claims as to form the same case and controversy.

22 19. The Court has personal jurisdiction over Defendants because
23 Richardson is subject to personal jurisdiction as a resident of the state of California,
24 because the underlying events giving rise to these causes of action occurred in this
25 judicial district, and Persistence is subject to specific jurisdiction in California and
26 the Central District of California by directing its solicitation of investors in the
27 Persistence Offering through Richardson in California.
28

20. Defendants also caused false representations to be made to Ms. Thomson through Defendant Richardson while Defendant Richardson was physically located in California.

21. Defendants Aggarwal and Persistence also paid a secret kickback to Richardson while she was physically located in California.

22. Additionally, because the facts alleged in this Complaint arise from a single transaction or occurrence, the Court also has pendent personal jurisdiction over all Defendants and because Section 27 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) authorizes nationwide personal jurisdiction and service of process.

23. Venue in this judicial district is proper under Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. § 78aa) and 28 U.S.C. § 1391(b)(2), or in the alternative, § 1391(b)(3).

24. Venue in this judicial district is also proper because the underlying events occurred in this judicial district.

25. Venue in this judicial district is also proper because Defendants caused false statements to be made to Ms. Thomson through Richardson while Richardson was present in this district.

26. Venue in this judicial district is also proper because Defendants Aggarwal and Persistence agreed to pay, and subsequently did pay, a secret kickback to Richardson while Richardson was present in this district.

BACKGROUND ON CRYPTOCURRENCY

27. The term “cryptocurrency” refers to an asset issued and/or transferred using distributed ledger or blockchain technology, including assets sometimes referred to as “cryptocurrencies,” “virtual currencies,” “digital assets,” “coins,” and “tokens.” Cryptocurrencies are digital assets that hold value based primarily on what a purchaser is willing to pay. Bitcoin (BTC) and Ethereum (ETH) are currently the most popular cryptocurrencies, but there are thousands of other cryptocurrencies.

1 28. All cryptocurrencies exist on a “blockchain.” A blockchain is an open-
2 sourced string of code, which is the underlying technology that facilitates the
3 creation of and subsequent transaction in a particular cryptocurrency. All
4 transactions are recorded on the blockchain and most are publicly available. When
5 market participants seek to transact in a particular cryptocurrency, those transactions
6 are submitted to the blockchain and are executed in batches of transactions, called
7 “blocks.” In many cases, those “blocks” are publicly available and reflect all of the
8 cryptocurrency transactions that occurred on the blockchain at a particular point in
9 time. Those “blocks” are all reflected on the blockchain and are ordered by date in a
10 “chain,” which is why it is called a “block”-“chain.”

11 29. There are a number of different blockchains. The first and most popular
12 blockchain was the Bitcoin blockchain. Another well-known blockchain is the
13 Ethereum blockchain, which launched the popular cryptocurrency ETH. The
14 Ethereum blockchain made it relatively easy to create new cryptocurrencies that
15 would also reside on the Ethereum blockchain. Those cryptocurrencies created on
16 the Ethereum blockchain are referred to as “ERC-20” compliant tokens. There are
17 thousands of cryptocurrencies other than BTC and ETH, which are commonly
18 referred to as “altcoins.” XPRT is considered an “altcoin”.

19 30. Smart contracts are open-sourced code that exist on the blockchain and
20 dictate to the market participants exactly how a particular transaction will be
21 executed. They are “self-executing”, meaning that each participant to a smart
22 contract does not have to agree in the future to make a payment or transfer
23 cryptocurrency. Once the “rules” of the smart contract are satisfied, the smart
24 contract automatically executes the transaction. Most smart contracts are designed
25 so they can never be changed. However, the designer of the smart contract can retain
26 the ability to “withdraw” the smart contract, which effectively cancels it.
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1 31. Users generally hold cryptocurrency tokens in digital wallets. On the
2 Ethereum blockchain, for example, tokens, wallets, and smart contracts are all
3 identifiable by unique public keys. These public keys are 40-digit alphanumeric
4 strings. Anyone can use the platform Etherscan to see the complete public history of
5 transactions associated with any of these public keys, including any time tokens are
6 traded, or any time a smart contract is used.

7 32. In recent years, the term “decentralized finance” or “DeFi” has become
8 popular. This term has been widely applied to traditional lending, yield earning, and
9 banking services that are not being performed by a centralized bank or financial
10 institution. Instead, these services are being provided solely by “decentralized”
11 organizations and governed by self-executing smart contracts.

12 33. Persistence is one such self-described “DeFi” project.

13 34. In reality, Persistence is actually controlled by a core team of
14 decisionmakers, including Aggarwal.

15 35. An important element of many DeFi protocols is “staking.” Those who
16 “stake” transfer cryptocurrency to a smart contract which is often referred to as a
17 “protocol” usually for a specified period of time and the user is rewarded with
18 interest, which is often referred to as “yield.”

19 36. As described in more detail below, Persistence offered a yield-earning
20 staking opportunity which it calls pSTAKE. pSTAKE funders include the notorious
21 Three Arrows Capital, Alameda Research, and Do Kwon.⁵

22 **BACKGROUND ON PERSISTENCE**

23 37. Persistence launched the Persistence Offering and the native staking
24 cryptocurrency (XPRT) in April 2021.

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27 ⁵ Zhiyuan Sun, *Liquid staking protocol pSTAKE raises \$10M from notable cryptocurrency venture*
28 *capital firms and angel investors*, COINTELEGRAPH (Nov. 16, 2021),
<https://cointelegraph.com/news/liquid-staking-protocol-pstake-raises-10m-from-notable-cryptocurrency-venture-capital-firms-and-angel-investors>.

38. The economic value of the Persistence Offering is directly connected to the overall performance of Persistence.⁶

39. Persistence has, at all relevant times, been controlled by Aggarwal as well as a small team of promoters including “core” team members Jeroen Develter, Mikhil Pandey, and Puneet Mahajan.

40. Aggarwal is the founder and CEO of Persistence.⁷

41. The ongoing operation, management, and future success of the Persistence Offering are under the control of Aggarwal and the core team.

42. This control includes, but is not limited to, the ability to update the XPRT network’s software, manage the XPRT economy, stimulate demand for XPRT, and enter into partnerships or collaborations with other enterprises to enhance the utility and value of XPRT.

43. For example, Persistence authored an article on February 10, 2022 in which Persistence asserted that “[i]n 2021, the Persistence team focused on the Core-1 mainnet launch and key block explorer/wallet/exchange integrations required to scale the ecosystem. In 2022 and beyond, the main focus for the team will be to drive significant economic activity on the Persistence Core-1 chain.”⁸

⁶ On March 25, 2021, in its published tokenomics, Persistence explicitly says “the economic activity driven both within and outside the ecosystem will drive value for XPRT” and proceeds to list specific ways that value is driven to XPRT through 4 different mechanisms, all of which Persistence has a role in creating. Persistence Team, *XPRT Tokenomics: Powering the Persistence Ecosystem*, PERSISTENCE (Mar. 25, 2021), <https://blog.persistence.one/2021/03/25/xprt-tokenomics-and-utility-powering-the-persistence-ecosystem/>.

⁷ Tushar Aggarwal, *Staking will eat proof-of-work for breakfast — Here’s why* (Aug. 18, 2021), <https://cointelegraph.com/news/staking-will-eat-blockchain-for-breakfast-here-s-why>; *FAQs*, PERSISTENCE, <https://persistence.one/faq>; Tushar Aggarwal, CEO of Persistence, BEINCRYPTO, <https://beincrypto.com/author/tushar-aggarwal/>; Tushar Aggarwal, CRUNCHBASE, <https://www.crunchbase.com/person/tushar-aggarwal-3997>; 1739: *Forbes Asia 30 under 30 Crypto CEO on Staking, DeFi and Blockchain Interoperability* (Oct. 10, 2021), <https://techblogwriter.co.uk/persistence/>.

⁸ Persistence Team, *The Vision for Persistence*, Persistence Blog (Feb. 10, 2022), <https://blog.persistence.one/2022/02/10/the-vision-for-persistence/>.

1 44. The potential for the Persistence Offering to appreciate in value, thereby
2 delivering a profit to its holders, depends largely on the effectiveness of Aggarwal
3 and Persistence’s collective efforts in these areas.

4 45. The Persistence Offering is available and has been sold in the United
5 States.

6 46. The Persistence Offering, is also freely available for purchase by United
7 States persons through certain cryptocurrency exchanges, including KuCoin and
8 Gate.io.

9 47. Indeed, Persistence had a section of their website dedicated to advising
10 customers on how to purchase XPRT, complete with links to various exchanges.

11 48. The website states “Get Involved In the Persistence Ecosystem.
12 Powered by XPRT” and elsewhere provided a host of links to exchanges and directs
13 customers to “[a]cquire XPRT.”⁹

14 49. This website was available and accessible throughout the United States,
15 including in California.

16 50. After being contacted recently by Plaintiff prior to the filing of this
17 action, Defendants removed the offer to “[a]cquire XPRT” as well as the links to
18 exchanges on which to purchase XPRT. Those links appeared on the Persistence
19 website and were functional at least as of April 27, 2023.

20 51. Persistence’s main website and the links prominently displayed thereon,
21 were accessible in California as of June 12, 2023.

22 52. Subsequently, some links on the Persistence’s main website have been
23 geofenced, or excluded from availability in California as of September 22, 2023.

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27 ⁹ Persistence, <https://persistence.one/>; Persistence, *XPRT*, <https://persistence.one/xprt> (this section
28 of the website provides users with links to popular exchanges on which they can purchase XPRT. The exchanges include Huobi Global, KuCoin, and Gate.io.).

1 53. Persistence’s website prominently states as follows: “Get Involved In
2 the Persistence Ecosystem. Powered by XPRT” and elsewhere provided a host of
3 links to exchanges and directs customers to “[a]cquire XPRT.”¹⁰

4 54. As part of its strategy to promote the Persistence Offering, the
5 Defendants Persistence and Aggarwal orchestrated extensive marketing campaigns,
6 produced promotional materials, and made numerous public statements.

7 55. Through these channels, which include Twitter, the Persistence website
8 and blog, YouTube, podcasts, Telegram, internet articles, ask me anything sessions
9 (commonly referred to as “AMAs”) and live conferences, the Defendant represented
10 and implied that XPRT was not only a functional asset within its digital ecosystem,
11 but also an investment that would appreciate greatly in value.

12 56. For example, on April 8, 2022, @pstakefinance, a social media account
13 operated by Persistence, tweeted that the current APR for a PSTAKE/OSMO pool
14 was 336%.¹¹

15 57. The April 8, 2022 tweet was demonstrably false. “Identifiable data from
16 five days prior to this tweet shows that the APR was 62%. The same data shows that
17 two days following this tweet, the APR was 74%. These APR percentages are many
18 multiples lower than the promised 336% on April 8, 2022. We have not identified
19 any basis for a 336% APR on April 8, 2022.”¹² As such, it is virtually impossible that
20 the APR was 336% on April 8, 2022.

21 58. On April 9, 2022, @pstakefinance tweeted “The PSTAKE/OSMO pool
22 on @osmosiszone is providing ~320% APR, currently the highest incentives out of
23 all pools on Osmosis. Provide liquidity and bond your tokens for 14 days to receive
24

25 ¹⁰ Persistence, <https://persistence.one/>; Persistence, *XPRT*, <https://persistence.one/xprt> (this section
26 of the website provides users with links to popular exchanges on which they can purchase XPRT.
The exchanges include Huobi Global, KuCoin, and Gate.io.).

27 ¹¹ @pStakeFinance, TWITTER (April 8, 2022, 1:48 PM),
[https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-](https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-sBKKQDK5A)
28 [sBKKQDK5A](https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-sBKKQDK5A).

¹² Dizik Decl. ¶ 24(n).

1 LP rewards. Total Rewards: 150,000 \$PSTAKE Provide liquidity:

2 <https://app.osmosis.zone/pool/648>.”¹³

3 59. “Identifiable data from six days prior to this tweet shows APR was 62%.
4 The same data shows that two days following this tweet, the APR was 74%. As such,
5 it is unlikely that the APR was approximately 320% on April 9, 2022. We are unable
6 to identify any basis for promising a 320% APR on April 9, 2022.”¹⁴ Accordingly,
7 this statement was false, or at least intentionally misleading, at the time it was made.

8 60. These false and misleading communications created an expectation of
9 profit among potential investors in the Persistence Offering.

10 61. The economic value of the Persistence Offering is directly connected to
11 the overall performance of Persistence.

12 62. Investors in the Persistence Offering relying on Persistence’s public
13 statements reasonably believed that the value of the Persistence Offering was tied to
14 the success of Persistence and its “core” team of promoters.

15 63. In various marketing and promotional materials, Persistence repeatedly
16 claimed that XPRT would incur “value accrual” from the Persistence ecosystem’s
17 financial activity.

18 64. Persistence claims on its website that “Persistence is an app chain for
19 Liquid Staking powering an ecosystem of DeFi applications focused on unlocking
20 the liquidity of staked assets” and that “\$XPRT is the native staking cryptocurrency
21 of the Persistence Core-1 chain.”

22 65. Persistence also offered a number of other products designed to allow
23 XPRT holders to earn profit from their investment.

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27 ¹³ @pStakeFinance, TWITTER (April 9, 2022, 12:34 AM),
<https://x.com/pstakefinance/status/1512650070037983232?s=46&t=OjdUXeKuQl4U-sBKKQDK5A>.

28 ¹⁴ Dizik Decl. ¶ 24(o).

1 66. For instance, in Persistence’s October 2021 newsletter, Persistence
2 highlighted “the launch of XPRT perpetual futures on AscendEX, with XPRT metrics
3 across the board rising steadily.”

4 67. Persistence offers “liquid staking” to facilitate its users’ profit.

5 68. In June 2021, Persistence launched pSTAKE, a “liquid staking solution”
6 the company described as “a turning point in Persistence’s history.”¹⁵

7 69. The company hosted a “Staking Gala” that closed on July 9, 2021.¹⁶
8 Persistence claimed that XPRT would incur “value accrual” from the financial
9 activity of Persistence.¹⁷

10 70. Traditionally, to stake assets a user would lock their cryptocurrency with
11 a protocol which would then pay them rewards for as long as the cryptocurrency was
12 locked.

13 71. “Liquid staking,” in contrast, is a system by which Persistence pays
14 users staking rewards, but also issues them a derivative asset called a “liquid token,”
15 which, according to Persistence, “can be used in DeFi for trading, liquidity
16 provisioning, lending, or borrowing.”¹⁸

17 72. On its website, Persistence describes the benefits of liquid staking
18 available to XPRT holders as “unlocking the liquidity of otherwise locked staked
19 assets, maximizing its capital efficiency, and providing greater flexibility and
20 potentially higher returns compared to traditional staking methods.”¹⁹

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24 ¹⁵ Persistence Blog, *Community Newsletter #10* (Aug. 22, 2021),
25 <https://blog.persistence.one/2021/08/22/community-newsletter-10-july-2021/>.

26 ¹⁶ Persistence (@PersistenceOne), Twitter (Jul. 8, 2021, 11:46 AM),
27 <https://twitter.com/pStakeFinance/status/1413177591025053702>.

28 ¹⁷ See Persistence, *XPRT: The Heart of Persistence Ecosystem*, <https://persistence.one/xprt>.

¹⁸ Persistence, *What is liquid Staking?*, FAQs, <https://persistence.one/faq>.

¹⁹ *Id.*

1 73. Aggarwal, Persistence, and Richardson falsely promised Ms. Thomson
2 that this liquid staking would allow her to earn extreme returns on her investment in
3 the Persistence Offering.

4 74. Persistence and Aggarwal secretly paid Richardson a kickback of
5 approximately \$783,702 in XPRT to act on their behalf, and to pass on their false and
6 misleading promises of high returns in order to recruit Ms. Thomson as an investor.

7 75. Aggarwal, Persistence, and Richardson all concealed the secret kickback
8 from Ms. Thomson.

9 **PERSISTENCE SOLD UNREGISTERED INVESTMENT CONTRACTS**

10 76. When determining whether cryptocurrency-related offerings are
11 securities subject to the Securities Laws, the Securities and Exchange Commission
12 (“SEC”) and federal courts have applied the “investment contract” analysis first
13 articulated by the U.S. Supreme Court in *SEC v. Howey*, 328 U.S. 293 (1946) (the
14 “*Howey test*”).

15 77. The *Howey test* is a four-part test for determining when a particular
16 arrangement constitutes an “investment contract,” and therefore, a security. Under
17 the *Howey test*, four elements must be met for an asset to be considered a security:

- 18 a. An investment of money;
19 b. In a common enterprise;
20 c. With an expectation of profits; that is
21 d. Solely derived from the efforts of others.

22 78. The Persistence Offering meets all four prongs of this test.

23 79. The SEC has repeatedly taken the position that, when cryptocurrencies
24 are purchased and sold for fiat and other cryptocurrencies, the “investment of
25 money” prong is satisfied. Given that Ms. Thomson exchanged value to invest in the
26 Persistence Offering, the “investment of money” prong is satisfied.

27 80. U.S. courts have held that a “common enterprise” exists where there is
28 both “horizontal” and “vertical” commonality. *See Revak v. SEC Realty Corp.*, 18

1 F.3d 81, 87 (2d Cir. 1994) (discussing horizontal commonality as “the tying of each
2 individual investor’s fortunes to the fortunes of the other investors by the pooling of
3 assets, usually combined with the pro-rata distribution of profits” and two variants of
4 vertical commonality, which focus on “the relationship between the promoter and the
5 body of investors”); *see, e.g., SEC v. Kik*, 492 F. Supp. 3d 169, 179 (S.D.N.Y. 2019)
6 (citing *Balestra v. ATBCoin LLC*, 380 F. Supp. 3d 340, 354 (S.D.N.Y. 2019));
7 *Mautner v. Alvin H. Glick Irrevocable Grantor Tr.*, No. 19-cv-2742, 2019 WL
8 6311520, at *7 (S.D.N.Y. Nov. 25, 2019).

9 81. With respect to the Persistence Offering, Persistence has created
10 “commonality” which satisfies the second prong of the *Howey* test because each of
11 the investors’ fortunes are tied to the fortunes of other investors in the Persistence
12 Offering. The profitability of the Persistence Offering is entirely dependent on the
13 development and marketing of the Persistence ecosystem by Persistence. *See Kik*
14 *Interactive Inc.*, 492 F. Supp. 3d at 176-85. For all these reasons, the Persistence
15 Offering satisfies the common enterprise prong.

16 82. The “Persistence One Official Announcements” Telegram account has
17 made numerous statements that support the common enterprise prong.
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- 1 a. On May 3, 2021, on Telegram, Persistence quoted the following
2 statement from Aggarwal in a recent podcast:

3 pSTAKE has surpassed 3K followers on Twitter amid
4 mounting anticipation for the Staking Gala and mainnet
5 launch! ❤️

6 🚀 We have been working hard to create a truly game-
7 changing liquid staking product for the PoS community. It's
8 a pleasure to see so much interest and engagement from
9 everyone.

10 🌱 As they say, "Success is a journey, not a destination."
11 Our team is happy to forge this path with all of you!

12 🚀 There is still so much more in store, so be sure to follow
13 pSTAKE if you're not already. Next stop is our Staking Gala,
14 beginning today, followed closely by the mainnet launch!

15 🐻 While other teams sleep during this volatile market, we
16 continue to press forward with vigor.

17 🙌 Thank you again!

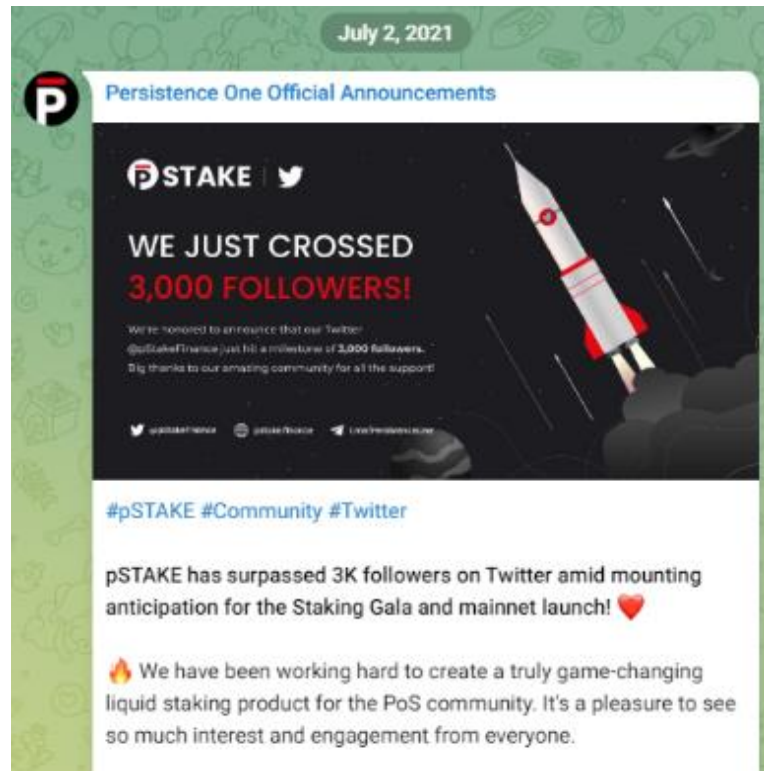
18 🗣️ Spread the word:
19 <https://twitter.com/pStakeFinance/status/1410934248475930630>

20 Persistence.one | Twitter | Telegram | Medium | YouTube
21 t.me/PersistenceOne/509 1.1K 👁 Jul 2, 2021 at 08:15

- 22 b. On May 28, 2021, on Telegram, Persistence stated:

23 🚀 We're continuously working hard to build out our product
24 ecosystem to provide new opportunities for both institutional and
25 crypto-native users, continuing with the launch of pSTAKE in June.

- 26 c. On July 2, 2021, Persistence, via its Telegram account stated, in
27 part: "We have been working hard to create a truly game-
28 changing liquid staking product for the PoS community. It's a
pleasure to see so much interest and engagement from everyone."



83. On February 10, 2022, in a blog post, the Persistence Team wrote that their focus in 2021 was the “Core-1 mainnet launch and key block explorer/wallet/exchange integrations required to scale the ecosystem.”²⁰

84. On February 10, 2022, in a blog post, the Persistence Team also stated that, “[i]n 2022 and beyond, the main focus for the team will be to drive significant economic activity on the Persistence Core-1 chain.”²¹

85. To determine whether there is an “expectation of profits,” the SEC applies an “economic reality” test. *See SEC v. Telegram Grp. Inc.*, 448 F. Supp. 3d 353, 365 (“In the analysis of purported investment contracts, form should be disregarded for substance and the emphasis should be on economic reality.”) (internal quotation omitted); *Kik*, 492 F. Supp. 3d at 179-180. Persistence repeatedly touts the

²⁰ Persistence Team, *The Vision for Persistence*, Persistence Blog (Feb. 10, 2022), <https://blog.persistence.one/2022/02/10/the-vision-for-persistence/>.

²¹ *Id.*

1 profitability of the Persistence Offering especially with respect to promised “APRs”
2 and “APYs” derived from its “liquid staking” program.

3 86. Numerous public statements by Persistence state specifically that
4 purchasers of XPRT can expect exorbitant “APRs” and “APYs.” Persistence
5 repeatedly used a rocket ship symbol to underscore these statements. A rocket ship
6 symbol is commonly understood in the cryptocurrency industry to communicate to
7 buyers and potential buyers that the value of the security being sold will increase
8 exponentially, “to the moon.”

9 87. For example, on May 4, 2021, on Telegram, Persistence stated: “[o]ur
10 primary aim is to ensure the continual advancement of the network for the long-term
11 success of Persistence and our community, and we’re thrilled to see this coming to
12 fruition!” A screenshot of this post is below:
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🚀 We will continue to remain transparent with the community. Our primary aim is to ensure the continual advancement of the network for the long-term success of Persistence and our community, and we're thrilled to see this coming to fruition!

🗣️ Spread the word:
<https://twitter.com/PersistenceOne/status/1389662058468290562>

[Persistence.one](#) | [Twitter](#) | [Telegram](#) | [Medium](#) | [YouTube](#)

Twitter



Persistence
 1/ Bonded (staked) \$XPRT percentage rises to 89% as 4M Ecosystem Fund tokens are locked directly in staking! 📈
 Recently 4M Ecosystem Fund tokens were released into the 'circulating' supply from the first scheduled token unlock. All of these tokens are now...
t.me/PersistenceOne/400 2.1K 👁 May 4, 2021 at 15:25

88. Additionally, the SEC has said that it is informative when “[a] digital asset is transferable or traded on or through a secondary market or platform.”²² XPRT is traded on a number of secondary markets, including Gate.io and KuCoin.

89. Recent precedent also reaffirms that notion that “[t]he inquiry is an objective one focusing on the promises and offers made to investors.” *SEC v. Ripple Labs, Inc.*, 2023 U.S. Dist. LEXIS 120486, at *29 (S.D.N.Y. July 13, 2023) (citing *Telegram*, 448 F. Supp. 3d at 371; *Warfield v. Alaniz*, 569 F.3d 1015, 1021 (9th Cir.

²² U.S. Securities and Exchange Commission, *Framework for “Investment Contract” Analysis of Digital Assets* (Mar. 8, 2023), https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets#_edn1.

2009)). Persistence specifically promised its investors that they could expect profits from investments in the Persistence Offering.

90. For these reasons, the Persistence Offering clearly satisfies the reasonable expectation of profit prong.

91. Finally, the “derived solely from the efforts of others” prong is closely related to the “common enterprise” prong. *Telegram*, 448 F. Supp. 3d at 375 (noting that the relevant inquiry asks “whether the reasonable expectation of profits [were] derived from the entrepreneurial or managerial efforts of others”) (internal quotation omitted). Whether this prong is met depends, in large part, on the involvement of third parties in off- and on-chain governance.

92. Persistence’s website makes abundantly clear that Aggarwal and the core team control the protocol,²³ so the “efforts of others” prong is easily satisfied with respect to the Persistence Offering.

- a. On March 25, 2021, in its published tokenomics, Persistence explicitly states “the economic activity driven both within and outside the ecosystem will drive value for XPRT” and proceeds to list specific ways that value is driven to XPRT through 4 different mechanisms, all of which Persistence has a role in creating.²⁴

²³ See, e.g., Persistence, *FAQs*, <https://persistence.one/faq> (stating in response to the question “[w]ho are the core team members of Persistence” as follows “The Persistence team currently comprises ~30 members. The Core team members of Persistence are - Tushar Aggarwal: Founder & CEO Jeroen Develter: Ecosystem lead Mikhail Pandey: pSTAKE lead Puneet Mahajan: Tech lead”).

²⁴ Persistence Team, *XPRT Tokenomics: Powering the Persistence Ecosystem*, PERSISTENCE (Mar. 25, 2021), <https://blog.persistence.one/2021/03/25/xprt-tokenomics-and-utility-powering-the-persistence-ecosystem/>.

b. Persistence, via Telegram, stated the following on May 12, 2021:
below:

👉 We'd like to thank Bitcoinist for their insightful article. We're working around the clock to usher in the new decentralized paradigm and it's great to see the space taking notice.

🚀 The next major milestone on our journey is the launch of our pStake liquid staking app, coming in June!

c. On May 25, 2021 Persistence repeated a quote from a validator which states the following:

"Persistence is one of the hardest working and most innovative teams that championed various streams including NFTs, liquid staking, and token distribution models in the Cosmos ecosystem." - Chorus One

📌 We're honored to have Chorus One securing the mainnet and supporting our journey, and we look forward to a long and fruitful relationship!

🌐 Chorus One announcement: <https://buff.ly/34g4tWW>

🗣️ Spread the word:
<https://twitter.com/PersistenceOne/status/1397168144037318656>

[Persistence.one](https://persistence.one) | [Twitter](#) | [Telegram](#) | [Medium](#) | [YouTube](#)
t.me/PersistenceOne/432 2.4K 👁 May 25, 2021 at 08:33

93. Because all four prongs of the *Howey* test are satisfied, the Persistence Offering is a security.

94. Persistence did not register the Persistence Offering as a security with the SEC or the California Department of Business Oversight.

AGGARWAL, PERSISTENCE AND RICHARDSON INDUCE MS. THOMSON TO INVEST WITH FALSE PROMISES

95. Sometime in 2021, Richardson became aware that Ms. Thomson had amassed significant holdings in Ethereum and Bitcoin.

96. Richardson met and formed a close relationship with Persistence and its founder, Tushar Aggarwal. Aggarwal and Richardson agreed that Aggarwal or

1 Persistence would pay Richardson a kickback if she convinced investors to invest in
2 the Persistence Offering. Richardson told Aggarwal about her relationship with Ms.
3 Thomson, including that Ms. Thomson had amassed a large portfolio of
4 cryptocurrency.

5 97. In communications with Ms. Thomson, Richardson described her close
6 relationship with Aggarwal and Persistence. Richardson concealed the secret
7 kickback that she would receive from Persistence.

8 98. For example, Richardson worked with Aggarwal on a business plan
9 related to staking as reflected in the below text conversation between Ms. Thomson
10 and Richardson on November 10, 2021:

11 Staking is VERY new

12 That is why I was legitimately working on a business plan
13 to create it

14 Staked with persistence seems solid to me !

15 I formed a C corp called TruStake

16 Because I thought we could scale it up, since there is
17 clearly a need

18 This is in no way on you, I genuinely worked with Tushar
19 who was desperate to create this for whales

20 99. On September 6, 2021, Richardson stated to Ms. Thomson that she
21 participated in a “huge marketing meeting” and “business development meeting”
22 with Aggarwal and the Persistence team.

23 100. On November 10, 2021, Richardson represented to a third party that she
24 was “aligning with persistence.”

25 101. Richardson and Aggarwal’s business relationship became deeply
26 intertwined, and they spoke regularly, especially during the autumn of 2021.

27 102. Richardson and Aggarwal spoke multiple times between September
28 2021 and January 2022.

1 103. In texts to Ms. Thomson, Richardson stressed her close relationship with
2 Persistence and Aggarwal, telling Ms. Thomson that she had engaged in the
3 following actions with Aggarwal and Persistence:

- 4 a. Attended business development meetings with Aggarwal.
5 b. On September 6, 2021, Richardson had “a huge marketing
6 meeting with persistence, and then a business development
7 meeting with Tushar. Also have news about things happening.”
8 c. Also on September 6, 2021, Richardson relayed to Ms. Thomson
9 information from Persistence that “BIG companies wanting to
10 buy out persistence tech,” and noted that she “told them to hold..
11 it’s a great sign they are sitting on something this valuable, but
12 too valuable to sell... yet).”
13 d. On September 10, 2021, Richardson related that she was “having
14 a call soon with the biggest crypto influencer, and getting him to
15 promote Persistence and get all Of [sic.] the other influencers on
16 board.”

17 Side note: I'm having a call soon with the biggest crypto
18 influencer, and getting him to promote Persistence and get
19 all
20 Of the other influencers on board

21 It's SO much fun

- 22 e. On September 29, 2021, she relayed to Ms. Thomson that
23 Persistence was “launching an aggregated NFT network in
24 November.”
25 f. On November 10, 2021, Richardson stated that she “formed a C
26 corp called TruStake Because I thought we could scale it up, since
27 there is clearly a need This is in no way on you, I genuinely
28 worked with Tushar who was desperate to create this for whales.”

1 104. On November 10, 2021, Richardson stated that Aggarwal “was
2 desperate to create” a staking service “for whales.” A “whale” is a wealthy investor.
3 Richardson and Aggarwal saw Ms. Thomson as such a “whale.”

4 105. Aggarwal and Persistence needed “whales” in order to artificially drive
5 up the value of XPRT and attract users to invest in the Persistence Offering.
6 Aggarwal, Persistence, and Richardson intended to, and eventually did, inflate the
7 apparent value of Persistence by directing Ms. Thomson’s large purchases of XPRT
8 into numerous different wallets.

9 106. Persistence stated in August that the number of transactions and wallets
10 created was “proof that our ecosystem of multi-chain #DeFi products is gaining
11 traction.”²⁵

12 107. On November 10, 2021, Richardson emphasized that Persistence wanted
13 to “open[] the door for other whales.”

14 108. Together, Aggarwal, Richardson, and Persistence set out to exploit
15 Richardson’s relationship with Ms. Thomson and targeted Ms. Thomson to induce
16 her to invest her money in Persistence.

17 109. Secretly, Aggarwal and Persistence promised to pay Richardson
18 kickbacks in exchange for her efforts.

19 110. After inducing Ms. Thomson to invest in the Persistence Offering
20 through false and misleading statements, Persistence and Aggarwal paid those
21 kickbacks to Richardson.

22 111. Defendants purposefully concealed the kickbacks from Plaintiff.
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²⁵ Persistence (@PersistenceOne), TWITTER (Aug. 23, 2021, 12:22 PM),
<https://twitter.com/PersistenceOne/status/1429841596711772167>.

1 112. Indeed, on November 10, 2021, Richardson told Ms. Thomson that “to
2 clarify any doubt” she was getting no compensation for the Persistence transactions.

3 on staked assets is 50% and it is not yet clear if they have insurance. For context: currently you are
4 earning 2.7-3M a month solely in coming from your persistence interest/staking, and it is estimated
5 this will likely go up considerably in the coming months earning between 30-150M a year in interest
alone (a commission of 15-75M a year). In contrast (and to clarify any doubt) I am not taking any
commissions or fees.

6 113. Richardson said this to Ms. Thomson to disguise the closeness of her
7 relationship with Persistence and Aggarwal, and to disguise the fact that she was
8 being paid to induce Ms. Thomson to invest in Persistence.

9 114. Persistence and Aggarwal structured the secret kickback to Richardson
10 to ensure that the more XPRT Ms. Thomson bought, the more XPRT Richardson
11 would get for herself.

12 115. Throughout the duration of her inducement of Ms. Thomson,
13 Richardson regularly met with Persistence and Aggarwal.

14 116. These included, at the very least, meetings on June 24, 2021, September
15 7, 2021, and October 7, 2021.

16 117. Shortly after these meetings, Richardson repeatedly fed Ms. Thomson
17 falsehoods about Persistence and its potential for growth.

18 118. These misstatements were communicated to Ms. Thomson on Aggarwal
19 and Persistence’s behalf.

20 119. Richardson communicated these misstatements to Ms. Thomson while
21 Richardson was located in California.

22 120. For instance, on August 18, 2021, Richardson sent Ms. Thomson a link
23 to an article written by Aggarwal, which made exorbitant claims about staking.

24 121. The article advertised the Persistence Offering, stating “we can see
25 traffic levels on those networks increase exponentially over the coming months and
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1 years. More traffic means more fees which means more generous rewards for
2 validators and stakers, making staking a no-brainer for generating passive income.”²⁶

3 122. On the same day, Richardson texted Ms. Thomson to pitch the
4 Persistence Offering, stating: “Irony is Bitcoin is at 44.5 and persistence is up to 7
5 today.”

6 123. On August 28, 2021, Richardson said, via text message to Ms.
7 Thomson, “The alts are insane movers. Persistence is a long game, really feel 2-5
8 years it will be massive Will go up this year, buy the major moves will likely be 2022
9 But* I’m planning on staking and parking. And trying to find ways with short term
10 gains on other alts. The lower the market cap the higher the potential. Which is why I
11 picked veracity as well. Interesting tech, and it just went up 3x in two weeks. Has a
12 long way to go. I invested 1k and now it’s 10k, for perspective. So diversifying in
13 that sector could really pay off, even if some lose.”

14 124. On August 22, 2021, Richardson sent Ms. Thomson a draft email that
15 she wanted Ms. Thomson to send to directors of the certain corporate entities and
16 trusts related to Ms. Thomson extolling the virtues of the “DeFi space” and saying
17 that she believes the Persistence Offering “will go much farther than Ethereum or
18 Bitcoin in regards to upside potential.” The full email is below:
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28 ²⁶ Tushar Aggarwal, *Staking will eat proof-of-work for breakfast — Here’s why* (Aug. 18, 2021),
<https://cointelegraph.com/news/staking-will-eat-blockchain-for-breakfast-here-s-why>.

Dear Mich and Bob,

I am reaching out directly to you both as a first line on a matter that is time sensitive and not as straight forward as Lieh buying ETF's. As you know I have been deeply intrigued and invested in the crypto space, but recently have also begun to explore the larger long term opportunities with smaller up and coming projects that exist in the DeFi space, all having a strong emphasis on Proof of Stake. It is understood that (crypto aside) blockchain technologies will become widely adapted in the coming years and are already being utilized/explored by major financial institutions. I have an opportunity to invest in of these companies as a staked token holder with a generous discount and a tremendous upside of APY. Based on their strong fundamentals and strategic partnerships I believe they will go much farther than Ethereum or Bitcoin in regards to upside potential. I am including a very top-level overview of the space written by their CEO. <https://cointelegraph.com/news/staking-will-eat-blockchain-for-breakfast-here-s-why>.

I understand crypto is a volatile space, but based on the underlying technologies and adaptation of DeFi the investment feels far more secure. I have negotiated a deal with them (directly) with a point entry point of \$5usd which they will honor despite the fact that it has since risen to \$9. Considering the investment is already up 95% upon entry, a far greater ROI than anything in our existing portfolio.

125. Ms. Thomson relied on these statements, and others, by Persistence, Aggarwal, and Richardson in deciding to invest in the Persistence Offering.

126. In an April 26, 2021 tweet, Persistence posted "If you're not staking \$XPRT yet, you're missing out on huge rewards!"²⁷

127. Based on an analysis of Ms. Thomson's actual staking rewards on the Persistence blockchain, Ms. Thomson was generally earning less than 33% APR returns.²⁸ Many of Persistence's claims about rewards are misleading.

128. On April 8, 2022, @pstakefinance, a social media account operated by Persistence tweeted that the current APR for a PSTAKE/OSMO pool was 336%.²⁹

129. The April 8, 2022 tweet was demonstrably false. "Identifiable data from five days prior to this tweet shows that the APR was 62%. The same data shows that two days following this tweet, the APR was 74%. These APR percentages are many multiples lower than the promised 336% on April 8, 2022. We have not identified

²⁷ Persistence (@PersistenceOne), Twitter (Apr. 26, 2021, 8:46 AM), <https://twitter.com/PersistenceOne/status/1386678153704267779>.

²⁸ Dizik Decl. ¶ 22.

²⁹ @pStakeFinance, TWITTER (April 8, 2022, 1:48 PM), <https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-sBKKQDK5A>.

1 any basis for a 336% APR on April 8, 2022.”³⁰ As such, it is so unlikely as to be
2 impossible that the APR was 336% on April 8, 2022.

3 130. On April 9, 2022, @pstakefinance tweeted “The PSTAKE/OSMO pool
4 on @osmosiszone is providing ~320% APR, currently the highest incentives out of
5 all pools on Osmosis. Provide liquidity and bond your tokens for 14 days to receive
6 LP rewards. Total Rewards: 150,000 \$PSTAKE Provide liquidity:
7 <https://app.osmosis.zone/pool/648>.”³¹ “Identifiable data from six days prior to this
8 tweet shows APR was 62%. The same data shows that two days following this
9 tweet, the APR was 74%. As such, it is unlikely that the APR was approximately
10 320% on April 9, 2022. We are unable to identify any basis for promising a 320%
11 APR on April 9, 2022.”³²

12 131. On April 26, 2021, Persistence tweeted: “The current APR for staking
13 XPRT stands at a whopping 42%+. This is among the highest reward rates in the
14 industry, and **the rewards will be no lower than 35% APR for the first two**
15 **years.**”³³ This figure is contradicted by the sample of 29.6% APR that Guidepost
16 Solutions calculated based on Ms. Thomson’s returns.³⁴

24 ³⁰ Dizik Decl. ¶ 24(n).

25 ³¹ @pStakeFinance, TWITTER (April 9, 2022, 12:34 AM),
26 <https://x.com/pstakefinance/status/1512650070037983232?s=46&t=OjdUXeKuQl4U-sBKKQDK5A>.

27 ³² Dizik Decl. ¶ 24(o).

28 ³³ @PersistenceOne, TWITTER (April 26, 2021, 9:46 AM),
<https://twitter.com/PersistenceOne/status/1386678153704267779> (emphasis added).

³⁴ Dizik Decl. ¶ 24(a).

132. On June 27, 2021 Persistence tweeted that “APYs [were] upto [sic.] 1,948%.” A screenshot is below:



133. On July 8, 2022, Mikhil Pandey, the project lead of Persistence Labs, while in the presence of Aggarwal in a virtual discussion posted on YouTube, discussed how one can obtain 60% yields through liquid staking on the Cosmos ecosystem available to pSTAKE customers.³⁵

134. Persistence released “community newsletters” on a monthly basis, which included numerous statements regarding the purported successes of the platform. In August 2021 the newsletter included updates such as “We crossed an incredible 200,000 transactions of XPRT with over 13,500 wallets created; our network is strong and the growth is phenomenal!” alongside a rocket ship symbol – a well-known emblem of profit-oriented cryptocurrency projects.

³⁵ *Roadmap & Use Cases | Snapshots: Diving into Liquid Staking*, YOUTUBE (July 8, 2022), <https://www.youtube.com/watch?v=dRsf4BMs828>.

1 135. In a community newsletter published on August 22, 2021, Persistence
2 stated that its pSTAKE project had secured its spot “as the most efficient liquid
3 staking product in the market.”³⁶

4 136. Many of Richardson’s communications with Ms. Thomson relayed false
5 and misleading information from Defendants Persistence and Aggarwal.

6 137. For instance, Richardson told Ms. Thomson, on behalf of Persistence,
7 that “[Persistence] grandfathered you in as a key investor and are essentially giving
8 you 65 Million in three weeks.” Despite these promises, Persistence never gave Ms.
9 Thomson 65 million.

10 138. Persistence and Richardson’s discrete and false or misleading statements
11 include:

- 12 a. Richardson’s statement that “to clarify any doubt,” that
13 Richardson was “not taking any commissions or fees” with
14 respect to Ms. Thomson’s investment with Persistence.
- 15 b. The Agreement misleadingly states that the “Agreement
16 constitutes the entire agreement between the Parties.” Persistence
17 and Aggarwal hid the kickback to Richardson by not including it
18 in the Agreement or any other document.
- 19 c. The Agreement also states that “each of the Parties acknowledges
20 that it has entered into this Agreement in reliance upon the other
21 Party’s representations and warranties being true, accurate,
22 complete, and non-misleading in all respects.”
- 23 d. On April 26, 2021, Persistence tweeted: “The current APR for
24 staking XPRT stands at a whopping 42%+. This is among the
25 highest reward rates in the industry, and the rewards will be no
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28 ³⁶ Persistence Blog, *Community Newsletter #10 – July 2021* (Aug. 22, 2021),
<https://blog.persistence.one/2021/08/22/community-newsletter-10-july-2021/>.

1 lower than 35% APR for the first two years.”³⁷ This figure is
2 contradicted by the sample of 29.6% APR that was calculated
3 based on Ms. Thomson’s returns.³⁸

- 4 e. On August 28, 2021, Richardson texted Ms. Thomson that there
5 was an “...upside of 269% annually for early adapters” for
6 staking with XPRT. After reviewing Ms. Thomson’s investment
7 returns and publicly available data, Guidepost Solutions was
8 unable to identify any basis for calculating a 269% return. Ms.
9 Thomson’s staking returns were significantly less than 269%.³⁹
- 10 f. On August 28, 2021, Richardson told Ms. Thomson she could
11 earn “200-600 % APY” with XPRT staking. Guidepost Solutions
12 opined that, “[a]fter reviewing Ms. Thomson’s investment returns
13 and publicly available data, we are unable to identify any basis for
14 calculating a 200-600% APY. Ms. Thomson’s staking returns
15 were significantly less than 200-600% APY.”⁴⁰
- 16 g. On October 7, 2021, Richardson said “Also want to walk you
17 through a meeting I just had with persistence [sic.] about liquid
18 staking – could be a huge upside for Atom, 15% a month APY
19 which is about 180% a year.” According to Guidepost Solutions,
20 “[a]fter reviewing Ms. Thomson’s investment returns and publicly
21 available blockchain data, we are unable to identify any basis for
22 calculating these returns. Ms. Thomson’s staking returns were
23 significantly less than 180% a year.”⁴¹

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26 ³⁷ Persistence (@PersistenceOne), TWITTER (Apr. 26, 2021, 9:46 AM),
<https://twitter.com/PersistenceOne/status/1386678153704267779>.

27 ³⁸ Dizik Decl. ¶ 24(a).

28 ³⁹ Dizik Decl. ¶ 24(b).

⁴⁰ Dizik Decl. ¶ 24(c).

⁴¹ Dizik Decl. ¶ 24(d).

- 1 h. On November 10, 2021, Richardson confirmed, via text message
2 to Ms. Thomson, that she was re-staking Ms. Thomson's assets
3 daily. Guidepost Solutions' review of Ms. Thomson's assets and
4 returns during this time period concluded that the XPRT were not
5 being 'restaked' or redelegated daily.⁴²
- 6 i. On November 10, 2021, Richardson told Ms. Thomson "currently
7 you are earning 2.7-3M a month solely in coming from your
8 persistence interest/staking, and it is estimated this will likely go
9 up considerably in the coming months earning between 30-150M
10 a year in interest alone (a commission of 15-75M a year)."
11 Guidepost Solutions "calculated significantly lower monthly
12 earnings from September 2021 through June 2022"⁴³ and was
13 "unable to identify a basis for the claim of an increase in
14 rewards."⁴⁴
- 15 j. On November 10, 2021, Richardson told Ms. Thomson that
16 "[Persistence] grandfathered you in as a key investor and are
17 essentially giving you 65 Million in three weeks." Guidepost
18 Solutions reviewed "Ms. Thomson's investment returns," and was
19 "unable to verify this statement."⁴⁵ "Under no calculation did
20 Persistence "give" Ms. Thomson \$65 million."⁴⁶
- 21 k. On November 10, 2021, Richardson told Ms. Thomson that "the
22 upside [of Persistence] is massive"; "You are generating about
23 3M in interest per month," "If it doubles next month that is 6M a
24 month!"; "I don't think you realize how much money is being

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26 ⁴² Dizik Decl. ¶ 24(e).

⁴³ Each value identified by Richardson does not state whether it is in USD or CAD. All values
27 calculated by Guidepost Solutions are in USD.

⁴⁴ Dizik Decl. ¶ 24(f).

⁴⁵ Dizik Decl. ¶ 24(g).

28 ⁴⁶ Dizik Decl. ¶ 24(g).

1 made – it’s bananas”; “I just want you to have a sense of what this
2 is, because I think long term this is huge.” Guidepost Solutions
3 was “unable to identify any indication that \$3M or \$6M in
4 interest a month was being earned by Ms. Thomson.”⁴⁷

5 l. On December 3, 2021 and December 8, 2021, Richardson said
6 that there was a “fixed return” of at least 35% in addition to an
7 APY that began at 6000% and “reduces weekly, until it lands
8 somewhere around 100-200%” for platforms including
9 Persistence. Guidepost Solutions “reviewed APY figures for the
10 relevant staking pairs and . . . found no support for a claim of
11 6,000% APY.”⁴⁸

12 m. On December 13, 2021, Richardson told Ms. Thomson that she
13 was “making 5.4 M a week on average, which seems insane and
14 is going down over time... but I just verified it.” “Ms. Thomson
15 was not earning anywhere near \$5.4M per week on average. In
16 reality, Ms. Thomson’s claimed staking rewards were valued at
17 closer to approximately \$6.8 million total over 12 months. This is
18 without taking into account the significant drop in value of XPRT
19 and the inability to sell all of Ms. Thomson’s XPRT due to a lack
20 of interest in the market.”⁴⁹

21 n. On January 6, 2022, Richardson told Ms. Thomson, “you are up
22 on persistence and with the interest and the extra 10M you are
23 getting for early liquidity, it makes up for it.” According to
24 Guidepost Solutions, “Ms. Thomson did not receive an ‘extra
25 10M.’”⁵⁰

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27 ⁴⁷ Dizik Decl. ¶ 24(h).

⁴⁸ Dizik Decl. ¶ 24(i).

⁴⁹ Dizik Decl. ¶ 24(j).

⁵⁰ Dizik Decl. ¶ 24(k).

- o. On January 12, 2022, Richardson told Ms. Thomson: “your Atom/Eth XPRT/Eth pairs have a fixed rate, but will be issued a large amount of yield for your early participation at the months end. The amount is still unknown as it is due to your percentage of participation throughout, however the estimates I have laid out previously still stand (somewhere between 500k-15M EST) and will be issued the last week of this month.” “After reviewing Ms. Thomson’s returns on investment, we did not identify any payment that was forthcoming at this time.”⁵¹
- p. On January 14, 2022, Richardson told Ms. Thomson, “to clarify, you are still up! Don’t forget the yield you are generating is greater than the price difference. Also, you are going to get an addition 5-10M on rewards (on top of your staking APY) at the beginning of Feb just for having been an early liquidity provider.” According to Guidepost Solutions, “[a]fter reviewing Ms. Thomson’s returns on investment, we did not identify any payment that was forthcoming in February 2022.”⁵²
- q. On April 8, 2022, @pstakefinance, a social media account operated by Persistence tweeted, in part: “Additional external rewards are live for PSTAKE/OSMO pool on @osmosiszone. Current APR: 336% Pool: <https://app.osmosis.zone/pool/648>.”⁵³ “Identifiable data from five days prior to this tweet shows that the APR was 62%. The same data shows that two days following this tweet, the APR was 74%. These APR percentages are many

⁵¹ Dizik Decl. ¶ 24(l).

⁵² Dizik Decl. ¶ 24(m).

⁵³ @pStakeFinance, TWITTER (April 8, 2022, 1:48 PM), <https://x.com/pstakefinance/status/1512487541311963137?s=46&t=OjdUXeKuQl4U-sBKKQDK5A>.

1 multiples lower than the promised 336% on April 8, 2022. We
2 have not identified any basis for a 336% APR on April 8, 2022.”⁵⁴

3 r. On April 9, 2022, @pstakefinance, a social media account
4 operated by Persistence tweeted, in part: “The PSTAKE/OSMO
5 pool on @osmosiszone is providing ~320% APR, currently the
6 highest incentives out of all pools on Osmosis. Provide liquidity
7 and bond your tokens for 14 days to receive LP rewards. Total
8 Rewards: 150,000 \$PSTAKE Provide liquidity:
9 <https://app.osmosis.zone/pool/648>.”⁵⁵ “Identifiable data from six
10 days prior to this tweet shows APR was 62%. The same data
11 shows that two days following this tweet, the APR was 74%. As
12 such, it is unlikely that the APR was approximately 320% on
13 April 9, 2022. We are unable to identify any basis for promising a
14 320% APR on April 9, 2022.”⁵⁶

15 139. Far from making an exorbitant rate of return on her investment Ms.
16 Thomson’s initial investment decreased approximately 94.5% compared to the
17 current value of her initial investment.

18 140. Ms. Thomson relied on many of the above representations.

19 141. Ms. Thomson relied on representations from Persistence and Richardson
20 to continue to invest her assets in liquidity pools.

21 142. Ms. Thomson would not have invested in the Persistence Offering if she
22 was not told the above-referenced false statements.

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24
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26 ⁵⁴ Dizik Decl. ¶ 24(n).

27 ⁵⁵ @pStakeFinance, TWITTER (April 9, 2022, 12:34 AM),
<https://x.com/pstakefinance/status/1512650070037983232?s=46&t=OjdUXeKuQl4U-sBKKQDK5A>.

28 ⁵⁶ Dizik Decl. ¶ 24(o).

**AGGARWAL, PERSISTENCE, AND RICHARDSON'S FALSE
STATEMENTS INDUCE MS. THOMSON TO INVEST**

143. Due to this targeted pressure campaign from Aggarwal, Persistence, and Richardson, Ms. Thomson acquiesced and agreed to invest in the Persistence Offering.

144. Despite the speculative risks of executing a cryptocurrency transaction of this kind, Richardson was dogged in insisting that Ms. Thomson enter into the Agreement for XPRT.

145. On August 18, 2021, Richardson urged Ms. Thomson to send Persistence a “good faith amount” of Bitcoin or to sign a letter of intent for purchase of the cryptocurrency before Ms. Thomson was able to enter into a formal contract to purchase the cryptocurrency.

146. Richardson was required to be licensed as a broker-dealer and was not, at this time.

147. Richardson also, for compensation, engaged in the business of advising Ms. Thomson, directly and through publications or writings as to the value and advisability of purchasing securities, purchasing securities when she advised Ms. Thomson to invest in the Persistence Offering.

148. On August 25, 2021, Ms. Thomson, at Richardson’s direction, invested in the Persistence Offering by entering into the Agreement.

149. The Agreement was signed by Ms. Thomson and Aggarwal.

150. The price of XPRT on the date of the first purchase had a high of approximately \$8.16.

151. The market price of XPRT as of the writing of the Complaint and this Amended Complaint is approximately \$0.16.

152. XPRT has decreased approximately 98% in value between the date of Ms. Thomson’s first purchase of XPRT and the writing of this Complaint.

1 153. Pursuant to Schedule 1 of the Agreement, Ms. Thomson agreed to invest
2 in the Persistence Offering by purchasing 4,000,000 XPRT in exchange for \$20
3 million worth of cryptocurrency.

4 154. When entering into the Agreement, Ms. Thomson relied on the false and
5 misleading information which Aggarwal, Persistence, and Richardson provided.

6 155. Together, Richardson and Persistence structured Ms. Thomson's
7 investment in the Persistence Offering through multiple transactions and sent XPRT
8 to multiple different wallets.

9 156. Aggarwal, Persistence, and Richardson structured the transactions and
10 storage in this manner in order to manipulate XPRT's price at Ms. Thomson's
11 expense.

12 157. Aggarwal, Persistence, and Richardson insisted on structuring these
13 transactions in this manner in order to make it appear that multiple individuals had
14 made large purchases of XPRT and to falsely create the impression of broad interest
15 in XPRT to the purchasing public.

16 158. In total, Persistence held Ms. Thomson's XPRT in 10 separate digital
17 wallets⁵⁷ in order to purposefully mislead the public, including actual and potential
18 purchasers of XPRT.

19 159. The digital wallets holding XPRT are readily available on the "Rich
20 List" on Mintscan.⁵⁸ The "Rich List" identified the digital wallets holding the largest
21 amounts of any particular cryptocurrency.⁵⁹ The 10 digital wallets associated with
22 Ms. Thomson were on the "Rich List."

23 160. Thus, due to Persistence and Richardson's improper and manipulative
24 structuring of the transactions and their storage, the market believed it was seeing a
25 series of high-value investments in the Persistence Offering by numerous distinct
26 _____

27 ⁵⁷ Dizik Decl. ¶ 10.

28 ⁵⁸ Mintscan, *Rich List*, <https://www.mintscan.io/persistence/address>.

⁵⁹ *Id.*

1 investors. In reality, a single investor, Ms. Thomson, had made approximately a
2 \$20,000,000 investment.

3 161. The scheme initially worked. Buoyed by the misleading information
4 Persistence put out to the buying public, XPRT's market cap grew by 30% in the
5 days following Ms. Thomson's initial August 25, 2021 investment.⁶⁰

6 162. Aggarwal, Persistence and Richardson used Ms. Thomson's investment
7 in other ways to mislead the investing public. For instance, Richardson proposed
8 naming Ms. Thomson's staking node "Persistence Bull" because it would be seen as
9 "a positive indicator whoever is holding it view there [sic] project in a positive light."

10 163. Defendants chose the name to publicly suggest that someone holding a
11 large amount of XPRT was generating returns.

12 164. As 2021 came to a close, Aggarwal, Persistence, and Richardson's
13 pressure campaign continued, and they convinced Ms. Thomson to purchase even
14 more XPRT.

15 165. In multiple transactions between August 2021 and June 2022, Ms.
16 Thomson purchased 8,624,431 XPRT worth \$46,082,634.

17 166. The first 4,000,000 XPRT were purchased under the Agreement, at an
18 approximate value of \$21,350,765.

19 167. The remainder of the XPRT purchased directly from Persistence
20 (purchased at a total value of \$24,731,599) were not purchased pursuant to the
21 Agreement.

22 168. The following transactions were purchased pursuant to the Agreement:
23
24
25

26 ⁶⁰ CoinMarketCap, *Persistence Historical Data*,
27 <https://coinmarketcap.com/currencies/persistence/historical-data/>; Richardson's own
28 undisclosed XPRT trades, received as part of the kickback, benefitted from this market
manipulation as well.

Date	Total Number of XPRT Purchased	Amount in BTC Paid in USD and Date
8/25/2021	3,000,000	15,711,929 on August 26, 2021
9/6/2021	1,000,000	5,638,837 on September 6, 2021

169. The following transactions were purchased outside of the Agreement:

Date	Total Number of XPRT Purchased	XPRT Market Price ⁶¹ Value in USD	Ms. Thomson's Location
10/4/2021	2,499,998	\$13,111,214	London
10/18/2021	1,499,997	\$9,996,588	London
10/23/2021	46,892	\$376,070	London
11/4/2021	51,039	\$452,975	London and Toronto
4/2/2022	6,666	\$ 23,597.64	Toronto
4/3/2022	91,147	\$ 327,219.13	Toronto
5/22/2022	59,039	\$ 98,890.95	Los Angeles
6/13/2022	43,160	\$ 48,122.83	Toronto
6/14/2022	139,145	\$ 130,865.02	Toronto
6/15/2022	187,349	\$ 166,056.52	Toronto

170. Richardson executed transactions in Ms. Thomson's digital wallets while physically present in California.

⁶¹ Market Price is average of High and Low on the day of sale from www.coinmarketcap.com.

171. Ms. Thomson relied on Persistence and Richardson's misleading promises and false statements when she entered into the Agreement.

172. However, Persistence and Richardson concealed numerous risks from Ms. Thomson associated with Ms. Thomson's purchase of XPRT.

173. Richardson affirmatively and fraudulently represented to Ms. Thomson that she *did not* receive any financial compensation for brokering the Agreement.

174. In an email on November 10, 2021, Richardson even told Ms. Thomson, "to clarify any doubt," that Richardson was "not taking any commissions or fees" with respect to Ms. Thomson's investment with Persistence.

175. In reality, in exchange for bringing Ms. Thomson in as an investor, Persistence paid Richardson a kickback of 97,166 XPRT.⁶²

176. The kickback was paid to Richardson over four different transactions between August and October 2021.⁶³

177. The kickback was worth approximately \$783,702 based on the price of XPRT at the times of the transactions.⁶⁴

178. The Defendants did not disclose this kickback arrangement to Ms. Thomson. In fact, the Defendants purposefully concealed the kickbacks from Ms.

⁶² Dizik Decl. ¶ 15; *see also* Mintscan Transaction Details:

1. August 25, 2021 Transaction:

- <https://www.mintscan.io/persistence/txs/CF632D7033A5E7982957769B943C45474F3B99B1E4732F317120BC37AA92C292>;

2. September 6, 2021 Transaction:

- <https://www.mintscan.io/persistence/txs/21A6BB7F9C585B3864178F1C598D5C7CCD78853D7B55161689EF542AE9FD1F1B>;

3. October 4, 2021 Transaction:

- <https://www.mintscan.io/persistence/txs/95E3C37378CAA357339196E2F9A96B2A58ECD8BC81CDBC6406BB90CA9A15556A>;

4. October 18, 2021 Transaction:

- <https://www.mintscan.io/persistence/txs/3A551ACC6AFBB9DD7CFDCFDCC483686C83392637C584E9DB77D945AFB102530A>.

⁶³ Dizik Decl. ¶ 15.

⁶⁴ Dizik Decl. ¶ 15.

1 Thomson. The Agreement itself purposefully contained no reference to this
2 kickback arrangement.

3 179. Section 7.4 of the Agreement specifically states that the “Agreement
4 constitutes the entire agreement between the Parties.”

5 180. The kickback also violates Section 2.5 of the Agreement, which states
6 that “each of the Parties acknowledges that it has entered into this Agreement in
7 reliance upon the other Party’s representations and warranties being true, accurate,
8 complete, and non-misleading in all respects.”

9 181. Ms. Thomson relied on Persistence’s representations being true,
10 accurate, complete, and non-misleading.

11 182. However, Persistence’s representations were untrue, inaccurate, and
12 misleading because, among other things, they failed to disclose the existence of the
13 secret kickbacks to Richardson.

14 183. The \$783,702 kickback was of significant value to Richardson and
15 presented a serious undisclosed conflict of interest. Richardson’s representation that
16 she was not earning any compensation also was significant to Ms. Thomson and was
17 an important consideration in her decision to authorize the investments into the
18 Persistence Offering.

19 **AFTER THE INITIAL PURCHASE**

20 184. After the Agreement was executed, Richardson continued to
21 fraudulently induce Ms. Thomson to continue investing in Persistence. Richardson
22 repeatedly assured Ms. Thomson that Ms. Thomson’s investment would considerably
23 increase by mid-2022.

24 185. Throughout this period, Ms. Thomson was convinced to repeatedly
25 reinvest in Persistence by purchasing more XPRT tokens.

26 186. After purchasing the 4,000,000 XPRT contemplated by the Agreement,
27 Ms. Thomson made subsequent purchases of XPRT on October 4, October 18,
28

1 October 23, November 4, in 2021 and on April 2, April 3, May 22, June 13, June 14,
2 and June 15 of 2022.

3 187. During the period in which Ms. Thomson was making these purchases,
4 Richardson continued to feed Ms. Thomson misleading statements from Persistence.

5 188. Richardson was present in California during this period.

6 189. On the same day that a purchase of XPRT was made, Richardson said
7 “[y]our 20M instantly became 32.2 - but I expect even higher tomorrow.”

8 190. On August 28, 2021, for example, Richardson, continuing to sell Ms.
9 Thomson on Persistence, stated that there is “...upside of 269% annually for early
10 adapters.”

11 191. There does not appear to be any basis for the figure of 269% annually.

12 192. On the same day, Richardson told Ms. Thomson that she “could have
13 [her] own staking pool; which could be massive returns.”

14 193. On the same day, Richardson also said “[r]eward is in the form of
15 persistence, I believe. And higher than regular staking. I’m getting the specifics next
16 week on a call with him. Maybe we can do a zoom and you can join? Would love you
17 to meet them.”

18 194. Aggarwal met with Ms. Thomson on or around January 21, 2022. He
19 did not disclose the kickback at that time.

20 195. On August 28, 2021, Richardson told Ms. Thomson she could earn
21 “200-600 % APY” with liquid staking.

22 196. On October 7, 2021, Richardson stated to Ms. Thomson: “Also want to
23 walk you through a meeting I just had with persistence [sic.] about liquid staking –
24 could be a huge upside for Atom, 15% a month APY which is about 180% a year.
25 Have another meeting now but after if you have time let’s hop on a call!”

26 197. On October 9, 2021, Richardson told Ms. Thomson that she believed
27 Persistence “could be honestly huge” and that Richardson was “very[,] very bullish”
28 on Persistence.

1 198. In a November 8, 2021 email to Ms. Thomson, Richardson told Ms.
2 Thomson that her holdings “could be considerably higher” by “mid-2022” and that
3 Ms. Thomson “should plan accordingly.”

4 199. In a November 10, 2021 text, Richardson told Ms. Thomson “the upside
5 [of Persistence] is massive”; “You are generating about 3M in interest per month,”
6 “If it doubles next month that is 6M a month!”; “I don’t think you realize how much
7 money is being made – it’s bananas”; “I just want you to have a sense of what this is,
8 because I think long term this is huge.” There is no apparent basis for this statement.

9 200. On November 10, 2021, Richardson told Ms. Thomson that Persistence
10 was “essentially giving [her] 65 Million in three weeks For being there - they are so
11 lovely That is on top of your assets!” There is no apparent basis for this statement.
12 Richardson falsely claimed that Ms. Thomson was earning “65 million” just “[f]or
13 being there.”

14 201. On November 10, 2021, Richardson told Ms. Thomson that she was
15 restaking her assets daily. In reality, Richardson was not restaking Ms. Thomson’s
16 assets daily.

17 202. Also in a November 10, 2021 email to Ms. Thomson, Richardson
18 claimed that Ms. Thomson was “earning 2.7-3M a month solely in coming from [Ms.
19 Thomson’s] [P]ersistence interest/staking.” Richardson further provided Ms.
20 Thomson an estimate that her investment in Persistence would “likely go up
21 considerably in the coming months earning between 30-150m a year in interest
22 alone.”

23 203. On December 3, 2021, Richardson said that there was a “fixed return”
24 of at least 35% in addition to an APY that began at 6000% and “reduces weekly, until
25 it lands somewhere around 100-200%” for platforms including Persistence. We are
26 unable to identify any basis for this 6000% figure.

1 204. In December 2021, Richardson told Ms. Thomson that she was “making
2 5.4 M a week on average, which seems insane and is going down over time... but I
3 just verified it.”

4 205. As the market began to decline, Richardson continued to persuade Ms.
5 Thomson that the value of her investment would increase.

6 206. On December 16, 2021, Richardson said “Super bullish on what
7 persistence is building, and today I need to go through additional airdrops I think you
8 may have received for new coins. The beauty of staking is that you often just getting
9 loads of free new coins by way of airdrops.”

10 207. On January 6, 2022, Richardson said that Persistence was holding its
11 value despite a large unlock of XPRT. She said “I still believe that it has the most
12 long term potential, and you are in profit.”

13 208. On January 12, 2022, Richardson said “your Atom/Eth XPRT/Eth pairs
14 have a fixed rate, but will be issued a large amount of yield for your early
15 participation at the months end. The amount is still unknown as it is due to your
16 percentage of participation throughout, however the estimates I have laid out
17 previously still stand (somewhere between 500k-15M EST) and will be issued the
18 last week of this month.” There is no apparent basis for this statement.

19 209. On January 14, 2022, Richardson said “to clarify, you are still up! Don’t
20 forget the yield you are generating is greater than the price difference. Also, you are
21 going to get an addition 5-10M on rewards (on top of your staking APY) at the
22 beginning of Feb just for having been an early liquidity provider ;).” Ms. Thomson
23 never received 5-10M in rewards in February 2022.

24 210. On the same day, Richardson said “unlock would have brought the price
25 down even in a good market, so expect it to go up from here. Early early project with
26 massive potential.”
27
28

1 211. A few days later, Richardson contradicted herself when she said that
2 Ms. Thomson was “up on persistence and with the interest and the extra 10M you are
3 getting for early liquidity, it makes up for it.”

4 212. In an email from January 20, 2022, Richardson predicted that Ms.
5 Thomson would receive an estimated “10-30M”, the vast majority of which was
6 from pSTAKE cryptocurrencies. Those cryptocurrencies ended up being worth
7 approximately \$2.34 million and were given on April 14, 2022.

8 213. Upon information and belief, Aggarwal and Persistence fed the above-
9 referenced false statements to Richardson for the purpose of sharing them with Ms.
10 Thomson.

11 214. On February 16, 2022, at the beginning of what turned out to be a steady
12 decline in the price of XPRT, Richardson said “[t]he good news is that it does seem
13 [sic] to be stabilizing and if the trend continues at this rate we you could be back to
14 whole by March.”

15 215. In reality, Ms. Thomson was not back to whole by March, as the price of
16 XPRT continued to decline.

17 216. On July 8, 2022, Mikhil Pandey, the project lead of Persistence
18 discussed on a virtual video conference posted publicly on YouTube how one could
19 obtain 60% yields through liquid staking on the Cosmos ecosystem available to
20 pSTAKE customers.⁶⁵

21 217. Defendants Aggarwal, Persistence, and Richardson knew or should have
22 known that the aforementioned statements were false or misleading at the time they
23 made these statements.

24 218. They made them anyway to extract all the value they could from their
25 “whale,” Ms. Thomson.

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28 ⁶⁵ *Roadmap & Use Cases | Snapshots: Diving into Liquid Staking*, YOUTUBE (July 8, 2022),
<https://www.youtube.com/watch?v=dRsf4BMs828>.

1 219. Given their duplicity, Ms. Thomson continued to rely on the statements
2 from Aggarwal, Persistence, and Richardson through 2022.

3 220. But for the continued pressure and false statements promulgated by
4 Aggarwal, Persistence, and Richardson, Ms. Thomson would not have made the
5 numerous non-Agreement purchases of XPRT between October 2021 and June 2022.

6 221. In fact, if she had been privy to the truth, Ms. Thomson would have
7 been able to sell her assets before they lost over 90% of their value.

8 **THE DEFENDANTS' MISREPRESENTATIONS AND FALSE**
9 **STATEMENTS ARE EXPOSED**

10 222. In 2022, the truth about Persistence and Richardson's false statements
11 and misrepresentations began to be exposed.

12 223. In or around January 2022, Ms. Thomson began reaching out to
13 Richardson to seek an accounting. Richardson was not forthcoming. She evaded the
14 questions regarding an accounting and made excuses as to why she couldn't provide
15 the requested information.

16 224. During this time, Richardson continuously assured Ms. Thomson that
17 she was earning money on her investment with Persistence and that she expected the
18 investment to continue to appreciate in value.

19 225. Richardson was evasive in response to Ms. Thomson's requests for an
20 accounting. This caused Ms. Thomson to become suspicious and triggered the
21 investigation that lead to the discovery of Richardson and Persistence's malfeasance.

22 226. Ms. Thomson retained Guidepost Solutions to begin an investigation on
23 or around June 2022.

24 227. On April 12, 2022, after months of Richardson failing to respond to
25 requests to return the assets, Ms. Thomson confronted Richardson at her home in
26 California and demanded the return of her assets. Richardson acquiesced and
27 returned a portion of the ledgers and a few key phrases necessary to access Ms.
28 Thomson's accounts.

1 228. After subsequent follow-up conversations, Ms. Thomson was able to
2 recover possession of her assets from Richardson beginning in June and July of 2022
3 and throughout August of 2022.

4 229. In or around this time, Persistence finally admitted to Ms. Thomson that
5 Persistence had provided a kickback to Richardson.

6 230. Subsequently, Richardson admitted that she had received payment in
7 connection with certain of Ms. Thomson's purchases of XPRT.

8 231. Given Richardson's previous insistence that no kickbacks were paid,
9 and Persistence and Aggarwal's concealment of the kickback, this revelation raised
10 major alarm bells.

11 232. The kickback was paid to Richardson over four different transactions
12 between August and October 2021 and was worth approximately \$783,702, based on
13 the price of XPRT at the times of the transactions.⁶⁶

14 233. Absent Aggarwal, Persistence, and Richardson's targeted
15 misinformation campaign, Ms. Thomson would never have invested in Persistence.

16 234. Between August 25, 2021 and June 15, 2022, Ms. Thomson invested
17 assets worth \$46,082,634 in Persistence. Those investments are currently worth
18 approximately \$2,500,000.

19
20
21 ⁶⁶ Dizik Decl. ¶ 15; *see also* Mintsan Transaction Details:

22 5. August 25, 2021 Transaction:

- 23 • <https://www.mintscan.io/persistence/txs/CF632D7033A5E7982957769B943C45474F3B99B1E4732F317120BC37AA92C292>;

24 6. September 6, 2021 Transaction:

- 25 • <https://www.mintscan.io/persistence/txs/21A6BB7F9C585B3864178F1C598D5C7CCD78853D7B55161689EF542AE9FD1F1B>;

26 7. October 4, 2021 Transaction:

- 27 • <https://www.mintscan.io/persistence/txs/95E3C37378CAA357339196E2F9A96B2A58ECD8BC81CDBC6406BB90CA9A15556A>;

28 8. October 18, 2021 Transaction:

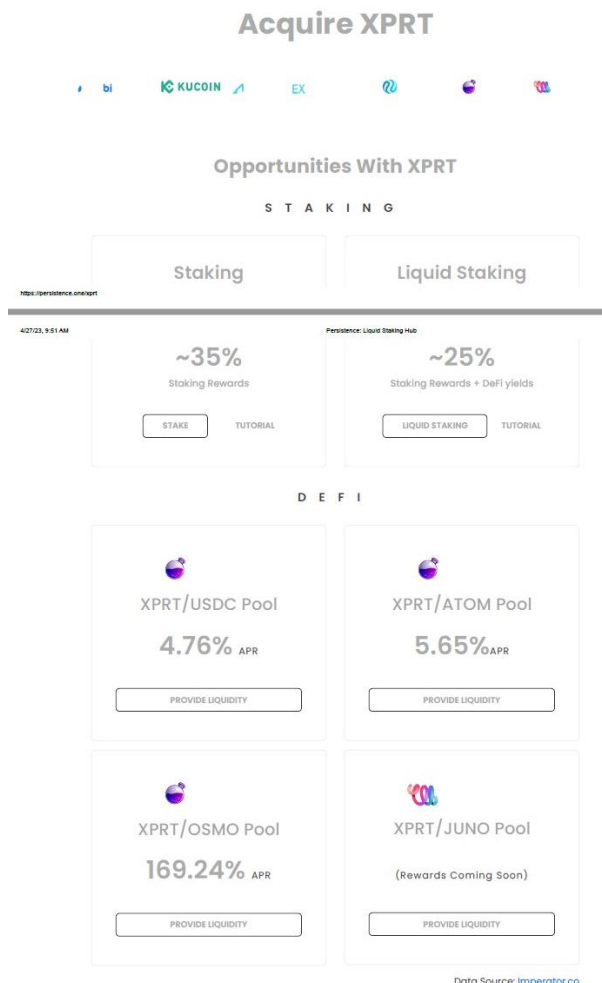
- <https://www.mintscan.io/persistence/txs/3A551ACC6AFBB9DD7CFDCFDCC483686C83392637C584E9DB77D945AFB102530A>.

235. This complaint seeks damages from the cryptocurrency purchased outside of the Agreement.

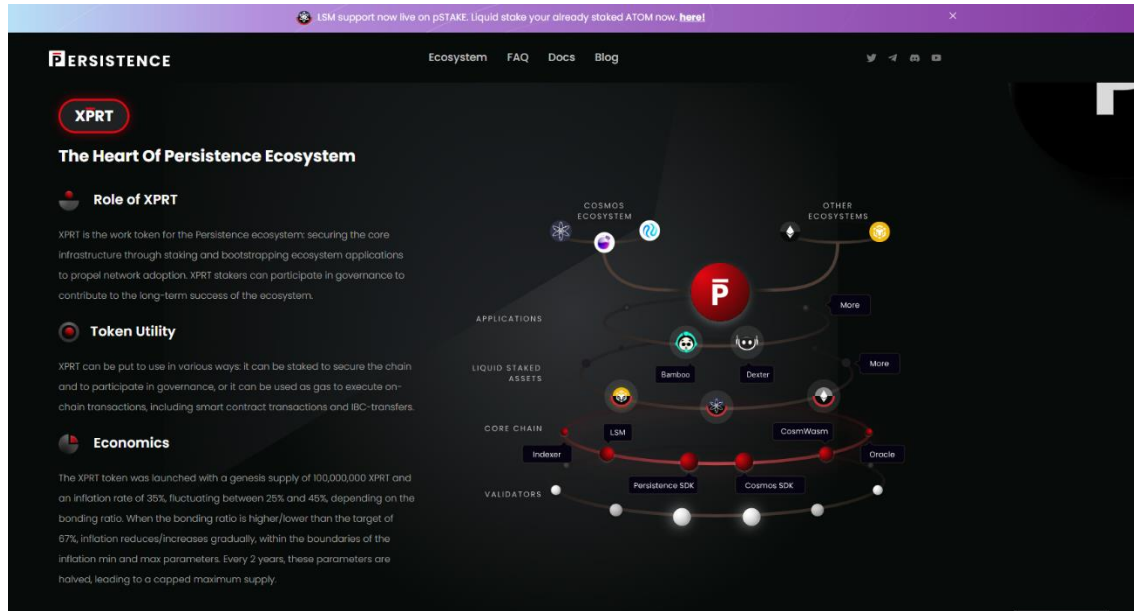
236. Ms. Thomson invested in the Persistence Offering because of the false claims of exorbitant returns.

237. Since Ms. Thomson reached out to Defendants, Persistence has attempted to remove the digital footprint of their activities from the internet. This includes deleting certain tweets advertising XPRT and removing the offer to sell XPRT from their website.

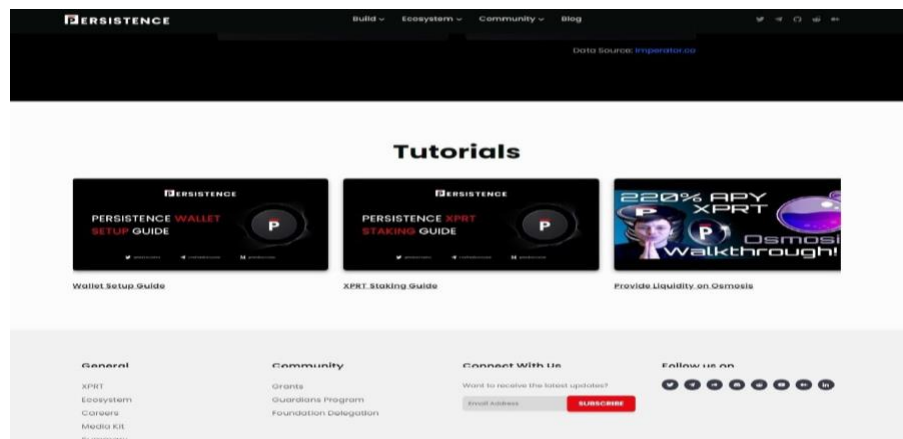
238. A screenshot of Persistence's website as of April 27, 2023 is below. The section reading "[a]cquire XPRT" with links to exchanges and the advertisement of staking rewards no longer exist at the following address: <https://persistence.one/xprt>.



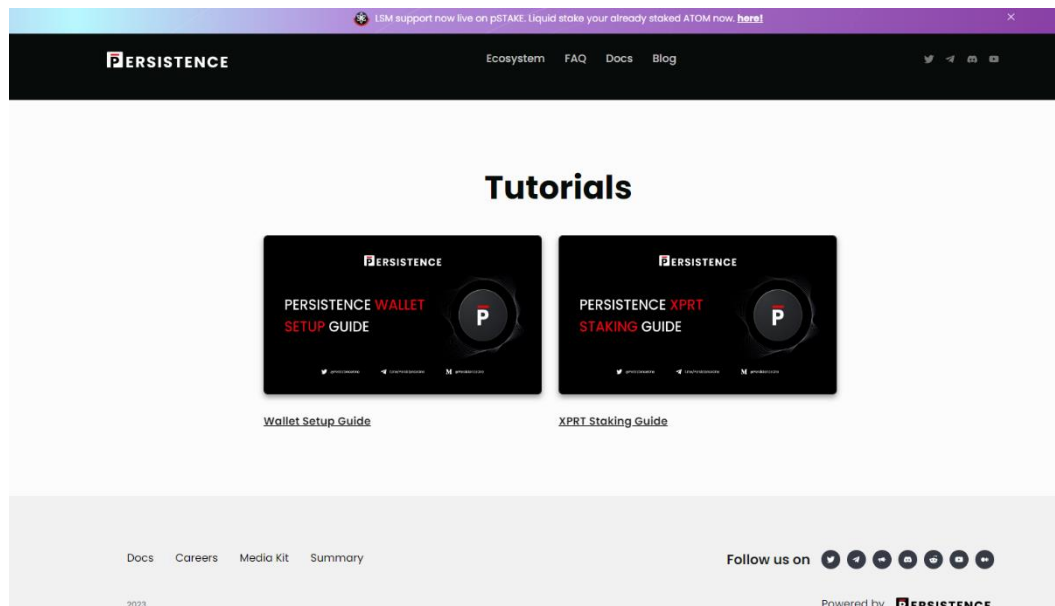
239. A screenshot of the same Persistence website, <https://persistence.one/xprt>, as of September 22, 2023, is below.



240. Defendants removed a tutorial for providing liquidity on osmosis from their website, as it was reflected below, as of April 27, 2023:



241. A screenshot of the same Persistence website as of September 22, 2023, is shown below.



CLAIMS FOR RELIEF

COUNT I

Fraud

(All Defendants)

242. The preceding paragraphs are incorporated herein as if fully restated.

243. Defendants made false statements of material fact to Plaintiff, which are identified in the above allegations, including, but not limited to the profitability of the Persistence Offering and that Richardson was not receiving a kickback.

244. At the time these representations were made, Defendants knew that they were false or recklessly disregarded the truth of whether statements were false or misleading.

245. These misrepresentations were material. Had Plaintiff known the truth, she never would have invested in the Persistence Offering.

246. Defendants made these statements intending to defraud Plaintiff and intending to induce Plaintiff's reliance therein.

1 247. Plaintiff reasonably relied on the truth of these statements.

2 248. As a direct and proximate result of this fraudulent conduct, Plaintiff
3 suffered an economic loss of at least \$24,731,599 sought in this proceeding.

4 249. Plaintiff is entitled to damages in an amount to be proven at trial.

5 **COUNT II**
6 **Civil Conspiracy to Commit Fraud**
7 **(All Defendants)**

8 250. The preceding paragraphs are incorporated herein as if fully restated.

9 251. Defendants Aggarwal, Persistence and Richardson agreed between
10 themselves to commit acts of fraud for the purpose of persuading Plaintiff to invest in
11 the Persistence Offering.

12 252. Specifically, Defendants Aggarwal, Persistence, and Richardson
13 conspired to hide the compensation paid to Richardson in return for convincing
14 Plaintiff to invest in the Persistence Offering.

15 253. Richardson, Aggarwal, and Persistence also issued misleading
16 advertisements, which are identified in the above allegations, which include, but are
17 not limited to, the profitability of the Persistence Offering and that Richardson was
18 not receiving a kickback.

19 254. As part of the conspiracy, Defendants committed overt acts including
20 making the specific representations described above to Ms. Thomson.

21 255. Defendants made these statements intending to defraud Plaintiff and
22 intending to induce Plaintiff's reliance therein.

23 256. Defendants knew the statements were false or misleading or recklessly
24 disregarded the truth of whether statements were false or misleading.

25 257. Plaintiff reasonably relied on the truth of these statements.

26 258. As a direct and proximate result of the encouragement by Richardson to
27 continue investing in the Persistence Offering and the payment of a kickback by
28 Persistence in furtherance of the conspiracy, Ms. Thomson suffered an economic loss
of at least \$24,731,599 sought in this proceeding.

1 259. Plaintiff is entitled to damages in an amount to be proven at trial.

2
3 **COUNT III**

4 **Violation of Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5**
5 **Promulgated Thereunder - 15 U.S.C. § 78j(b) and 17 C.F.R. § 240.10b-5**
6 **(All Defendants)**

7 260. The preceding paragraphs are incorporated herein as if fully restated.

8 261. Plaintiff Taylor Thomson invested in the Persistence Offering.

9 262. The Persistence Offering is an “investment contract.”

10 263. Defendant Richardson is a resident of California and was present in
11 California at the time of the purchase.

12 264. During the relevant period, the Defendants sold the Persistence Offering
13 to the Plaintiff, which was not registered with the Securities and Exchange
14 Commission (“SEC”) and were not exempt from registration, in violation of Section
15 5 of the Securities Act of 1933.

16 265. Defendants made false statements of material fact to Plaintiff, which are
17 identified in the above allegations, including, but not limited to the profitability of
18 the Persistence Offering and that Richardson was not receiving a kickback.

19 266. Defendants made these misrepresentations with the intent to deceive
20 Plaintiff, in order to convince her that Richardson was operating on her behalf and so
21 induce her to invest in the Persistence Offering.

22 267. Plaintiff relied on these misrepresentations in choosing to invest in the
23 Persistence Offering.

24 268. As a result of his purchase, Plaintiff suffered an economic loss of at least
25 \$24,731,599 sought in this proceeding.

26 269. Plaintiff Thomson’s loss came as a factual and proximate result of
27 Defendants’ material misstatements and omissions, as Plaintiff would not have
28 invested in the Persistence Offering had Defendants not made such misstatements
and omissions.

1 270. Plaintiff is entitled to damages in an amount to be proven at trial.
2 Plaintiff is also entitled to reasonable costs and attorneys' fees, as authorized by 15
3 USCS § 78i(f).

4 **COUNT IV**

5 **Selling Unregistered Securities - Cal. Corp. Code §§ 25503 and 25110**
6 **(Persistence and Aggarwal)**

7 271. The preceding paragraphs are incorporated herein as if fully restated.

8 272. Defendants Aggarwal, Persistence, and Richardson offered to sell the
9 Persistence Offering within the state of California.

10 273. Defendants Aggarwal, Persistence, and Richardson offered the
11 Persistence Offering in issuer transactions.

12 274. The Persistence Offering was an "investment contract."

13 275. The Persistence Offering was not duly qualified with California
14 Department of Business Oversight under Cal. Corp. Code. § 25110 at the time of the
15 transactions.

16 276. No exemption from qualification applied to the security or the
17 transaction.

18 277. Plaintiff invested in the Persistence Offering in reliance on Defendants'
19 offer.

20 278. As a direct and proximate result of Defendant's violation of Cal. Corp.
21 Code § 25110 Cal. Plaintiff has suffered an economic of at least \$24,731,59 sought in
22 this proceeding.

23 279. Under Cal. Corp. Code. § 25503 Plaintiff is entitled to recovery and/or
24 damages in an amount to be proven at trial.

25 **COUNT V**

26 **Misrepresentation or Omission of Material Fact in the Sale of Securities - Cal.**
27 **Corp. Code §§ 25501 and 25401**
28 **(All Defendants)**

280. The preceding paragraphs are incorporated herein as if fully restated.

1 281. Defendants Aggarwal, Persistence, and Richardson offered to sell the
2 Persistence Offering within the state of California.

3 282. Defendants Aggarwal, Persistence, and Richardson sold XPRT as part of
4 the Persistence Offering to Plaintiff.

5 283. Defendants made untrue statements of material fact and/or omitted
6 material facts in selling the Persistence Offering.

7 284. Defendants made false statements of material fact to Plaintiff, which are
8 identified in the above allegations, including, but not limited to the profitability of
9 the Persistence Offering and that Richardson was not receiving a kickback.

10 285. The omissions and misstatements constitute a violation of Cal. Corp.
11 Code § 25401.

12 286. As a direct and proximate result of Defendant's violation of Cal. Corp.
13 Code § 25401, Plaintiff has suffered an economic loss of at least \$24,731,599 sought
14 in this proceeding.

15 287. Under Cal. Corp. Code § 25501 Plaintiff is entitled to rescission and/or
16 damages in an amount to be proven at trial.

17 **COUNT VI**

18 **False Advertising - Cal. Bus. & Prof. Code § 17500 BPC**
19 **(All Defendants)**

20 288. The preceding paragraphs are incorporated herein as if fully restated.

21 289. At all relevant times, Defendants Aggarwal, Persistence and Richardson
22 made, disseminated, or caused to be made or disseminated, materially false or
23 misleading statements, which they knew or should have known to be false or
24 misleading, intended to induce the public to enter into obligations pertaining to the
investment into the Persistence Offering.

25 290. Defendants made false statements of material fact to Plaintiff, which are
26 identified in the above allegations, including, but not limited to the profitability of
27 the Persistence Offering and that Richardson was not receiving a kickback.
28

1 291. Defendants made these false and misleading statements with the intent
2 to sell the Persistence Offering.

3 292. Defendants' false and misleading statements were likely to deceive a
4 reasonable consumer because consumers reasonably relied on the information
5 provided by seemingly professional counterparties concerning the financial
6 performance of their own product.

7 293. As a direct and proximate result of Defendants' false and misleading
8 statements, Plaintiff invested in the Persistence Offering and lost at least \$24,731,599
9 sought in this proceeding.

10 294. Plaintiff is entitled to damages in an amount to be proven at trial.

11 **COUNT VII**
12 **Cal. Bus. & Prof. Code § 17200 et. seq.**
13 **(All Defendants)**

14 295. The preceding paragraphs are incorporated herein as if fully restated.

15 296. Cal. Bus. & Prof. Code §17200, et seq., prohibits, in relevant part, "any
16 unlawful, unfair, or fraudulent business act or practice" and "unfair, deceptive,
17 untrue, or misleading advertising."

18 297. The conduct of Persistence, Aggarwal, and Richardson, including but
19 not limited to disseminating deceptive and misleading advertising when it published
20 figures about wallets and transactions and claimed that it was proof that its
21 ecosystem was gaining traction, splitting Ms. Thomson's investment into 10 separate
22 wallets, claiming returns on investment that were misleading, Defendant Richardson
23 explicitly denied receiving a commission for selling Ms. Thomson XPRT, and
24 disseminating deceptive and misleading advertising that violates Cal. Bus. & Prof.
25 Code § 17200 et. seq.

26 298. Defendants' representations are likely to deceive a reasonable consumer
27 because consumers reasonably relied on the information provided by seemingly
28 professional counterparties concerning the financial performance of their own
product.

1 299. As a direct and proximate result of Defendants' false and misleading
2 statements, Plaintiff invested in the Persistence Offering and lost at least \$24,731,599
3 sought in this proceeding.

4 300. Plaintiff is entitled to damages in an amount to be proven at trial.

5 301. Defendant Persistence made the following false and misleading
6 statements intended to induce the public to enter into obligations pertaining to the
7 purchase of the Persistence Offering.

8 **COUNT VIII**
9 **Aiding and Abetting Common Law Fraud**
10 **(All Defendants)**

11 302. The preceding paragraphs are incorporated herein as if fully restated.

12 303. Persistence and Aggarwal had actual knowledge of the underlying tort
13 committed by Richardson, namely that Ms. Thomson was being misled regarding the
14 returns she was receiving on her investment and the kickback being paid to
15 Richardson.

16 304. Persistence and Aggarwal provided substantial assistance or
17 encouragement to Richardson in failing to tell Ms. Thomson about the kickback and
18 making similar exorbitant claims regarding return on the investment.

19 305. Persistence and Aggarwal reached a conscious decision to participate in
20 tortious activity for the purpose of assisting another in performing a wrongful act.
21 As a direct and proximate result of Defendants' decision, Plaintiff invested in the
22 Persistence Offering and has suffered an economic loss of at least \$24,731,599
23 sought in this proceeding.

24 **COUNT IX**
25 **Cal. Corp. Code § 25004**
26 **(Against Richardson)**

27 306. The preceding paragraphs are incorporated herein as if fully restated.

28 307. Cal Corp. Code § 25501.5 provides a private right of action for those
who purchase securities from unlicensed broker-dealers.

1 316. Richardson failed to obtain an investment adviser certificate as required
2 by Cal. Corp. Code § 25230.

3 317. Richardson at no time applied for or secured from the Commissioner of
4 Financial Protection and Innovation a certificate, then in effect, authorizing her to act
5 as an investment adviser.

6 318. California Code of Civil Procedure § 1029.8 provides a private right of
7 action for persons harmed by “[u]nlicensed persons who cause injury or damage . . .
8 as a result of providing goods or performing services for which a license is required
9 under . . . Section 25230”

10 319. Richardson caused Ms. Thomson to suffer financial damages, namely
11 \$24,731,599 sought in this proceeding, as a result of her advice regarding purchasing
12 and continuing to invest in the Persistence Offering.

13 320. Persistence knowingly provided substantial assistance to Richardson in
14 violation of Cal. Corp. Code § 25230 and thus is in violation of that provision as well
15 pursuant to liability of persons inducing or assisting a violation pursuant to Cal.
16 Corp. Code § 25403.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 20 a. For compensatory damages in an amount to be proven at trial, but no less
21 than \$24,731,599 sought in this proceeding.
22 b. For punitive damages.
23 c. For rescission of investments in the Persistence Offering.
24 d. For such other relief as the Court deems to be just and proper.

25
26
27 **JURY DEMAND**

28 Plaintiff demands a trial by jury on all issues so triable.

1
2
3 Dated: September 23, 2023

Respectfully submitted,

4 **MCDERMOTT WILL & EMERY LLP**

5
6 By: /s/ Julian Andre

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14 *Counsel for Plaintiff Taylor Thomson*